

LIFE IS GOOD, INC. V. LG ELECTRONICS U.S.A., INC
Civil Action No. 04 11290 WGY

DECLARATION OF TIMOTHY LEMPER IN SUPPORT OF DEFENDANTS' MOTION IN LIMINE
TO STRIKE PLAINTIFF'S EVIDENCE OF ALLEGED CONFUSION

Exhibit 6

19985
FieldRptr

1

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3
4 - - - - - x

5 LIFE IS GOOD., INC.,

6 Plaintiff, Civil Action

7 vs. No. 04-cv-11290-REK

8 LG ELECTRONICS, U.S.A., INC.,

9 LG ELECTRONICS MOBILECOMM

10 U.S.A., INC., (formerly

11 LG INFOCOMM U.S.A., INC.),

12 Defendants.

13 - - - - - x

14 VIDEOTAPED DEPOSITION OF JOHN JACOBS, a witness

15 called by and on behalf of the Defendants, taken

16 pursuant to the provisions of the Federal Rules of

17 Civil Procedure, before Dana Welch, a Registered

18 Professional Reporter and Notary Public in and

19 for the Commonwealth of Massachusetts, at the

20 offices of Finnegan, Henderson, Farabow, Garrett

21 & Dunner, LLP, on Friday, October 14, 2005,

22 commencing at 10:31 a.m.

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1 Obviously, you're familiar with the 12:05:24
2 defendant in this action, LG. My question to you 12:05:28
3 is, when did you first become aware of the 12:05:34
4 existence of the company LG? 12:05:38
5 A I may have seen an ad or something. But I do 12:05:42
6 remember a friend calling, who lives out west, who 12:05:48
7 saw a sign at an arena, maybe it was the Staple 12:05:52
8 Center, where the Lakers play. But my guess would 12:05:56
9 be that was a year and a half, two years ago. 12:06:04
10 Q Before then, had you ever heard of the company LG? 12:06:10
11 A I don't think so. And my estimate of when that 12:06:16
12 was, I don't know, two years, maybe a little more, 12:06:26
13 maybe a little less. But I don't think I had heard 12:06:30
14 of it. 12:06:34
15 Q Do you have an understanding of what line of 12:06:34
16 business LG is in? 12:06:40
17 A Yeah. 12:06:42
18 Q What's that? 12:06:42
19 A It's electronics. They sell cell phones, 12:06:42
20 refrigerators, that sort of thing. 12:06:48
21 Q Perhaps I could ask you to -- well, let me ask you, 12:06:52
22 now that you've become aware of LG, do you have an 12:07:06

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1 A I've had people tell me they -- you want very 12:37:44
2 specifics, I assume. 12:37:54
3 Q Yes. 12:37:56
4 A Yeah. I've got several examples., One was the -- a 12:37:56
5 friend of mine who I work with, said, when he was 12:38:10
6 leaving his old company, went down to visit his 12:38:14
7 regional sales manager, and the manager came into 12:38:20
8 the room the last day he was going to be down there 12:38:24
9 in Connecticut and said, "Well, you'd never guess, 12:38:28
10 it was so strange, I was at Best Buy last night, 12:38:30
11 looking at flat screen TVs, and who made it, but 12:38:34
12 Life is good." And he said something like, "Wow, 12:38:40
13 you guys are making everything now." 12:38:46
14 And Mike said, "No, actually we don't -- 12:38:48
15 that's not Life is good." 12:38:54
16 And I've heard of two other ones that 12:38:58
17 relate to Best Buy, very similar stories, where a 12:39:00
18 young sales person told a friend that -- this is a 12:39:06
19 friend of a friend, Carol Scully, her -- her friend 12:39:14
20 walked into a store and the sales person indicated 12:39:24
21 that she was buying a refrigerator from Life is 12:39:30
22 good. And the other one is Susan deMarco, very 12:39:36

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1 similar one, where there was confusion about -- 12:39:42
2 there's a reference to Life is good. and the 12:39:48
3 refrigerator. 12:39:52
4 And I remember a person who works in our 12:39:54
5 store on Newbury Street saying that a woman walked 12:39:58
6 in and asked about a billboard in New York and was 12:40:00
7 confused, said, do you -- is that your ad or I 12:40:06
8 don't really understand what Life is good. makes or 12:40:10
9 something like that. 12:40:12
10 Q Now, did you talk to any of the individuals who 12:40:14
11 allegedly expressed confusion, yourself? 12:40:18
12 A I've had a personal -- I've had several personal 12:40:22
13 interactions where people were -- were confused. 12:40:28
14 One I can recall is a neighbor who asked me about 12:40:32
15 an air conditioning unit, if our company had some 12:40:36
16 sort of deal or had gotten into that product 12:40:40
17 category. 12:40:42
18 Q Anything other than that? 12:40:44
19 A I have not really made a point to document those. 12:40:46
20 A lot of times, it's personal interactions with 12:40:54
21 people when you just meet them and you tell them 12:40:56
22 what you do, they say -- you know, that's when the 12:41:00

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1 confusion usually comes up. 12:41:04

2 Q Okay. Let's go back to the four instances that you 12:41:06

3 told me about earlier. 12:41:10

4 A Okay. 12:41:12

5 Q And my question to you is, did you personally 12:41:12

6 discuss with the individual who was allegedly 12:41:16

7 confused why they were confused? 12:41:20

8 A No. No. 12:41:24

9 Q So you have no personal knowledge of what was 12:41:24

10 spoken or said? 12:41:28

11 A You mean, I wasn't there? 12:41:28

12 Q Yes. 12:41:32

13 A Correct. 12:41:34

14 Q And you have no personal knowledge of actually what 12:41:34

15 was said from the individual? 12:41:38

16 A Right, other than what was passed on to me. 12:41:38

17 Q Okay. And who is the individual on the -- the 12:41:42

18 first example you used, an individual named Mike, 12:41:48

19 who was the person that uttered the alleged 12:41:52

20 instance of confusion? 12:41:54

21 A His name is Mike. His last name begins with an M. 12:41:56

22 And the company my -- the guy at our company his 12:42:00

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1 name is Mike Sabourin, S-A-B-O-U-R-I-N, who heard 12:42:06
2 it. And the guy who said it is Mike and begins 12:42:14
3 with an M. And I believe he's a regional sales 12:42:16
4 manager for the company called SAS, S-A-S. It's a 12:42:20
5 software company. 12:42:24
6 Q And what -- what is -- well, let me strike that. 12:42:26
7 Why was Mr. Sab -- is it Sabourin? 12:42:32
8 A Sabourin. 12:42:38
9 Q -- talking to Mr. Mike M? 12:42:40
10 A I would guess he had business down there, but also 12:42:42
11 saying good-bye because that was his last time he 12:42:44
12 was going to see him before moving on to Life is 12:42:48
13 good. 12:42:50
14 Q The second one you mentioned is Carol Scully. 12:42:50
15 A Yeah. 12:42:54
16 Q Who is the individual that uttered the alleged 12:42:56
17 confusion? 12:42:58
18 A I don't know the name of that person. 12:43:00
19 Q What about the individual who uttered the alleged 12:43:02
20 confusion that Ms. Susan deMarco indicated? 12:43:06
21 A Yeah. She told me the name, but I don't remember 12:43:14
22 it right now. 12:43:16

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1 Q When did you talk to her? 12:43:16

2 A I e-mailed her or she e-mailed me maybe, I don't 12:43:18

3 know, five days ago. 12:43:32

4 Q Do you have a copy of that e-mail? 12:43:32

5 A With me? 12:43:34

6 Q No. Do you have one? 12:43:34

7 A Oh, it would probably be in my e-mail box. 12:43:38

8 Q We would ask that you produce it. 12:43:40

9 A Okay. 12:43:40

10 Q And did Ms. deMarco give you the name of -- the 12:43:46

11 name of the -- let me strike that. 12:43:46

12 What did Ms. DeMarco give you in terms of 12:43:48

13 information? 12:43:52

14 A Just a few sentences, saying, whoever this woman 12:43:52

15 was in Best Buy and got confusing information about 12:44:00

16 the source of the refrigerator. 12:44:08

17 Q Did she detail exactly what was said? 12:44:10

18 A Yeah. Let's see. There were two examples 12:44:12

19 involving -- two or three involving Best Buy, so 12:44:18

20 I'm trying to think. I think the one from Susan 12:44:22

21 said that the -- the young sales associate told the 12:44:24

22 woman that the refrigerator was made by Life is 12:44:34

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1 Q And Mr. Sabourin? 12:47:22

2 A Sabourin, he said late May, 2005, because that's 12:47:24

3 when he was leaving SAS. 12:47:32

4 Q Okay. Let's turn to your alleged confusion and 12:47:34

5 that's if you would give me -- well, let me ask 12:47:36

6 this: Strike that. 12:47:44

7 When did this utterance occur? 12:47:46

8 A My guess is summer of '04. 12:47:48

9 Q And where did this occur? 12:47:52

10 A In front of my condominium. 12:47:56

11 Q And who was it with? 12:47:58

12 A Lawrence McCray is who -- there's two neighbors 12:48:04

13 that I see a lot or talk to. And there's a chance 12:48:08

14 it could be Dennis Quilty (phonetic). But I 12:48:18

15 believe it was Lawrence McCray. 12:48:20

16 Q Are you absolutely sure? 12:48:22

17 A No. No. I was going to ask if he recalled, but I 12:48:26

18 didn't. I think it was one of those neighbors. 12:48:30

19 Q Did this neighbor, whoever it is, know that you 12:48:32

20 work with Life is good.? 12:48:42

21 A Yes. 12:48:44

22 Q And what was the reason for them talking to you? 12:48:44

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1 A I think that's why he brought it up. I think he 12:48:50
2 had seen a "life's good" ad and then he saw the air 12:48:54
3 conditioner and asked if we made the product or had 12:49:00
4 some association with it. 12:49:04
5 Q Specifically, what did he say? 12:49:10
6 A Oh. "Don't tell me you guys are making air 12:49:12
7 conditioners now." But that's -- that's -- I don't 12:49:22
8 know the exact wording, so that's my best guess. 12:49:26
9 Q Had he purchased an air conditioner? 12:49:30
10 A It's, I believe, in a unit that's not owned by 12:49:34
11 either one of us; so it's someone else's unit. 12:49:38
12 Q He wasn't involved with the purchase? 12:49:42
13 A No. 12:49:44
14 Q Okay. Did he see the air conditioner? 12:49:44
15 A Did he what? 12:49:52
16 Q See the air conditioner? 12:49:54
17 A Did he see it? Yes. I think that's why he made 12:49:56
18 the comment. 12:49:58
19 Q What was the reason -- let me ask this: Do you 12:50:00
20 have personal knowledge of how and what he saw that 12:50:06
21 created the specific alleged confusion? 12:50:10
22 A I don't, no. 12:50:16

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1 Q Do you know if it was the product itself? 12:50:16
2 A I don't know. 12:50:20
3 Q Would it be fair to say that you don't know what 12:50:22
4 spurred the alleged instance of confusion from this 12:50:34
5 neighbor? 12:50:36
6 A I could only speculate because I don't know. 12:50:38
7 Q Okay. You indicated earlier that you thought he 12:50:40
8 had seen a "life's good" ad. Do you recall that? 12:51:14
9 A I do recall, yeah, that's -- that would be my 12:51:18
10 speculation, that he saw the ad and then he saw the 12:51:20
11 product. 12:51:24
12 Q But we don't know that for sure? 12:51:24
13 A Correct. 12:51:26
14 Q Do you know whether or not LG was publishing 12:51:26
15 advertisements for its air conditioners with the 12:51:40
16 logo depicted as Exhibit 4 at that time? 12:51:48
17 A I don't know. 12:51:50
18 Q Other than what we've talked about of the four or 12:51:52
19 five instances that you just recounted, do you have 12:52:28
20 any other personal knowledge? 12:52:32
21 A When you say personal knowledge -- 12:52:34
22 Q Yes. 12:52:36

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1 A -- I directly heard it? 12:52:36

2 Q Yes. 12:52:38

3 A No. I told you, many instances where I didn't 12:52:40

4 record someone's name, just people saying, "Are you 12:52:42

5 guys making cell phones" or comments like that. 12:52:46

6 Q So you didn't directly hear it? 12:52:48

7 A I've got other examples from other people. But no 12:53:14

8 -- wait, those I did directly hear. I just don't 12:53:18

9 have a record of people's names and dates. 12:53:22

10 Q So you don't know the specifics of why they were 12:53:28

11 asking the questions? 12:53:32

12 A Correct. 12:53:32

13 Q Mr. Jacobs, are you involved with the protection in 12:53:32

14 any manner of your company's trademarks? 12:54:10

15 A Not really. I mean, I guess I'm kept abreast of 12:54:14

16 any big things happening, but not a lot of direct 12:54:20

17 focus in that area. 12:54:24

18 Q Are you familiar with any of your company's past 12:54:26

19 efforts to enforce its rights? 12:54:30

20 A I know there have been, but it's primarily done by 12:54:32

21 our attorney. 12:54:38

22 Q Do you have any specific knowledge of any action 12:54:38

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